

### **REMARKS**

This is in response to the Office Action mailed May 18, 2007, the Interview Summary mailed August 16, 2007, and the Advisory Action mailed September 18, 2007 regarding the subject application.

The applicant's attorney wishes to express his appreciation for the telephonic interview granted by the Examiner on August 8, 2007 regarding the subject application. The Examiner's remarks were helpful and informative and were taken into consideration by the applicant's attorney.

During the course of the interview, it was understood that the Examiner had said that it would not be necessary for the applicant's attorney to submit an Interview Summary, but that the Examiner would take care of that. In the Interview Summary mailed August 16, 2007, however, it was indicated that "The formal written reply to the last Office Action must include the substance of the interview". The Advisory Action mailed September 18, 2007 made no mention of this requirement. Applicant's attorney is therefore not sure as to whether this requirement exists, but will provide the following summary in order to comply if the requirement does exist.

In the telephonic interview between Carl D. Price and Dana Bigelow of August 8, 2007, discussion was given to the claim 106 and in particular discussion of the terms "external bottom side" versus "external bottom end". Applicant's attorney indicated that he intended to submit an Affidavit under 35 CFR 1.132 to indicate that the invention had obtained a level of commercial success indicative of unobviousness. The applicant's attorney requested the opportunity to submit a preliminary draft of the Affidavit to obtain feedback from the Examiner prior to submitting the formal document. The Examiner discouraged the applicant's attorney from doing so. The applicant's attorney was directed to the US PTO MPEP for guidance in filing the 132 Affidavit.

The Advisory Action mailed September 18, 2007 indicated that the proposed Amendment would not be entered because it involves new issues that would require further consideration.

The Advisory Action also indicated that the 132 Affidavit would not be entered because the applicant failed to provide a showing of good and sufficient reasons why the Affidavit was necessary and was not earlier presented.

The Request for Reconsideration was indicated as not placing the application in condition for allowance because it was based on information presented in an accompanying Declaration filed under 37 CFR 1.132 which has not been entered.

In response, the applicants have filed a Request for Continued Examination and have amended the claims by way of Preliminary Amendment. The following remarks are made in response to the Office Action mailed May 18, 2007 in view of the amended claims.

By the Office Action mailed May 16, 2007, claims 151-154 and 159 are finally rejected under 35 U.S.C. 102(b) as being anticipated by US 2002154305 (Goerl). Claims 106-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl in view of newly cited reference GB 000882881 (Horner) (newly cited). Claims 117-149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl in view of Horner and DE 3339848. Claims 156-158 and 160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl in view of FR 2446097.

In response, the applicants have amended the claims and prepared an Affidavit under 35 CFR 1.132 to provide evidence of secondary considerations for the purpose of traversing the Section 103 rejections.

In respect to the Section 103 rejections on the basis of combining the features of the Goerl and Horner references, the Examiner has said that "In response to applicants argument based upon the age of references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references".

The Examiner went on to describe the types of objective evidence that is required to be submitted in support of secondary considerations with respect to the issue of obviousness.

In response, the applicants have prepared an Affidavit under 35 CFR 1.132 and are submitting it herewith. In this regard, the applicants reiterate their contention that it would not be obvious to combine the features of the Goerl reference with those of the Horner reference and, even if they were combined, they would not result in the invention as claimed by the applicants. Regarding the obviousness of the combination, the Goerl et al. reference has been a matter of public knowledge since 1939, and the Horner reference has been a matter of public knowledge since 1961. Clearly, nobody skilled in the art has seen fit to combine the features of the two to obtain the applicants invention. By the applicant's submission of its Affidavit under 35 CFR 1.132, an effort has been made to show evidence that 1) the industry recognized the significance and breakthrough nature of the applicant's invention, 2) the product met with overwhelming success in the marketplace and allowed the owner to quickly overcome its competitors in market share and 3) after having been shown the way, the competition commenced to copy the applicants in its design features. Thus, the applicants believe that these secondary considerations are very supportive of the position that it would have not been obvious to a person having ordinary skill in the art to modify the Goerl reference to include a single thermally conductive member along the entire extent of a peripheral edge of the external bottom side in the manner as set forth in applicant's claims, in view of the teaching of Horner, as suggested by the Examiner. A reconsideration of the Examiner's rejections on the basis of 37 CFR 103 is respectfully requested in view of the applicant's Affidavit under 35 CFR 1.132 submitted herewith.

In respect to the Goerl reference as applied to claims 151-154 and 159, the Examiner has indicated that the applicant's argument "Is however not commensurate with the scope of applicant's claimed invention, nor is it commensurate with the applicant's own disclosure. In this regard, the elements in US 002154305 (Goerl) do indeed meet the limitations of the claimed invention, since it is noted that applicant's

"top housing" (e.g. 1152,158) are associated with the external bottom "side" of the vessel rather than the bottom wall as suggested by applicant".

The applicants appreciate the Examiners pointing out this inconsistency and have amended claim 151 to be consistent with the applicant's disclosure. The applicants had made the same remarks regarding claim 106 and have therefore amended that claim in the same manner.

For the reasons discussed hereinabove, the applicants believe that the claims, as amended, are patentably distinctive over the cited references. A reconsideration of the Examiner's rejections and a passing of the case to issue is therefore respectfully requested.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes a fee is due with this response. Please charge our Deposit Account No. 50-0289, under Order No. 1323\_001RCE from which the undersigned is authorized to draw.

Dated: October 17, 2007

Respectfully submitted,

By 

Dana F. Bigelow

Registration No.: 26,441

MARJAMA MULDOON BLASIAK &  
SULLIVAN LLP

250 South Clinton Street

Suite 300

Syracuse, New York 13202

(315) 425-9000

Customer No.: 20874